

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ADOLFO DIAZ REYES,

Defendant-Appellant.

UNPUBLISHED

January 14, 2003

No. 234448

Oceana Circuit Court

LC No. 00-001982-FC

Before: Meter, P.J., and Neff and Donofrio, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of two counts of criminal sexual conduct in the first degree (CSC I), MCL 750.520b(1)(a) (victim under thirteen). Defendant was sentenced to ten to twenty-five years' imprisonment for each count. We affirm.

Defendant's only issue on appeal is whether the trial court abused its discretion in denying his request to cross-examine the eleven-year-old victim about her sexual activities with persons other than defendant to explain her age-inappropriate knowledge, her physical condition, and her possible motive for false accusation. We disagree. This Court reviews a trial court's exclusion of evidence under the rape shield law for an abuse of discretion. *People v Adair*, 452 Mich 473, 485; 550 NW2d 505 (1996).

Defendant filed a motion in limine requesting the court allow cross-examination of the victim about prior sexual activities with persons other than defendant. To admit this evidence, defendant was required to first make an offer of proof regarding the proposed evidence and show its relevance. *People v Byrne*, 199 Mich App 674, 678; 502 NW2d 386 (1993). Even if defendant surmounts that first hurdle, the next step is not admissibility at trial, but an in-camera evidentiary hearing to determine the admissibility of the evidence in light of his Sixth Amendment right of confrontation. *Id.* Defendant must establish that another individual was convicted of criminal sexual conduct involving the child victim and that the facts underlying that conviction are significantly similar to be relevant to defendant's case. *People v Morse*, 231 Mich App 424, 437; 586 NW2d 555 (1998).

Generally, in situations where a victim's detailed description of sexual matters may be relevant, there are other means of examining the victim about the source of age-inappropriate knowledge without producing evidence of sexual conduct with others. *People v Arenda*, 416 Mich 1, 13; 330 NW2d 814 (1982). For example, "[c]ounsel could inquire whether the victim

had any experiences (e.g., reading a book, seeing a movie, conversing with others, schoolwork, or witnessing others engaged in such activity) which aided him or her in describing the conduct that is alleged.” *Id.* In this case, the trial court allowed defense counsel to cross-examine the victim about watching an x-rated movie and looking at magazines to explain that there were other sources for the victim’s age-inappropriate knowledge.

However, when a prosecutor introduces medical evidence to establish penetration, evidence of alternative sources of penetration become highly relevant to material issues in dispute. *People v Hayley*, 153 Mich App 400, 405; 395 NW2d 60 (1986). In *Hayley*, this Court reasoned that, without the disputed evidence, the jurors only recourse was to view the physician’s testimony regarding penetration as evidence that the defendant was the only source of that penetration. *Id.* at 405-406.

In the present case, a physician testified that the victim had sexual intercourse two weeks before the physical examination to which he testified—more than a year after the alleged assaults. Also, the trial court viewed the physician’s testimony about the physical examination as being consistent with the medical history the victim gave to the physician; therefore, the court found it unnecessary to cross-examine the victim about sexual activities with persons other than defendant.

Defendant failed to show that cross-examining the victim would have provided any relevant evidence concerning false allegations against others or a motive to make false allegations. Because defendant failed to show the relevancy of cross-examining the victim about sexual activities with persons other than defendant, the trial court did not abuse its discretion by not allowing the intrusion of the rape shield law.

Affirmed.

/s/ Patrick M. Meter

/s/ Janet T. Neff

/s/ Pat M. Donofrio